

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: David N. Krag

Application No.: 10/791,662

Confirmation No.: 2720

Filed: March 2, 2004

Art Unit: 3731

For: SYSTEM AND METHOD FOR
BRACKETING AND REMOVING TISSUE

Examiner: M. H. Thaler

INDICATION OF ATTORNEYS OF RECORD UNDER 37 CFR 1.32

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Please recognize the attorneys associated with Customer No. 25096 as being of record in the patent application referenced above.

Attached is a copy of the Power of Attorney filed in the parent application, which is Application No. 09/078,982, filed May 14, 1998 in which this application relies upon for an earlier filing date under 35 USC 120.

Dated: April 21, 2008

Respectfully submitted,

By 
Susan D. Belcher
Registration No. 43,498

PERKINS COIE LLP
P.O. Box 1247
Seattle, Washington 98111-1247
(206) 359-8000
(206) 359-7198 (Fax)
Attorney for Applicant

PATENT

I hereby certify that on the date specified below, this correspondence is being sent via facsimile to (703) 305-3590, Attn: Examiner William Lewis, Commissioner for Patents, Washington, D.C. 20231.

Date

4/30/01

Tracy Gutscher

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : David N. Krag
 Application No. : 09/078,982
 Filed : May 14, 1998
 For : SYSTEM AND METHOD FOR BRACKETING AND
 REMOVING TISSUE

Examiner : William Lewis
 Art Unit : 3731
 Docket No. : 34114-8001US
 Date : April 5, 2001

Commissioner for Patents
 Washington, DC 20231

REVOCATION AND SUBSTITUTE POWER OF ATTORNEY

Sir:

In the matter of the above-identified application, I, Eric Meier, declare that I am the President and CEO of Calamari Medical, Inc., the assignee of the entire interest. Documentary evidence of chain of title from the original owners to Calamari Medical, Inc. is attached herewith in the form of an Assignment. The evidentiary documents referred to in the instant Revocation and Substitute Power of Attorney have been reviewed by the undersigned, and it is certified that, to the best of my knowledge and belief, title is in Calamari Medical, Inc. I hereby revoke all powers of attorney heretofore

given and appoint JERRY A. RIEDINGER, Registration No. 30,582; MAURICE J. PIRIO, Registration No. 33,273; JOHN C. STEWART, Registration No. 40,188; MICHAEL D. BROADDUS, Registration No. 41,637; BRIAN P. MCQUILLEN, Registration No. 41,989; CATHERINE HONG TRAN, Registration No. 43,960; ROBERT G. WOOLSTON, Registration No. 37,263; PAUL T. PARKER, Registration No. 38,264; JOHN M. WECHKIN, Registration No. 42,216; CHRISTOPHER DALEY-WATSON, Registration No. 34,807; STEVEN D. LAWRENZ, Registration No. 37,376; JAMES A.D. WHITE, Registration No. 43,985; EDWARD S. HOTCHKISS, Registration No. 33,904; JAMES NICKELSON, Registration No. 46,140; STEPHEN E. ARNETT, Registration No. 47,392; and DAVINA L. CHILDS, Registration No. 47,485, of Perkins Coie LLP, as the principal attorneys with full power of substitution, association, and revocation to prosecute said application, to transact all business in the Patent and Trademark Office connected therewith, and to receive the letters patent therefor. Please direct all correspondence to Customer Number 25096.

Bar Code:



25096

PATENT TRADEMARK OFFICE

Calamari Medical, Inc.

Eric Meier
President and CEO

Date

4/6/01

EXHIBIT A

ASSIGNMENT OF EXISTING INTELLECTUAL PROPERTY RIGHTS

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, and under the Restricted Stock Purchase Agreement dated June 8, 2000 ("Agreement"), between Calamari Medical, Inc. ("Company") and D. Krag LLC ("Assignor"), Assignor grants, sells, assigns and delivers to Company and its heirs, successors, and assigns all rights title and interest in and to the inventions as set forth in U.S. Patent Applications serial nos. (a) 09/078,982, (b) 09/096,807 and (c) 09/442,793, and in PCT Application Nos. (a) PCT/US99/10580 and (b) PCT/US99/10683, including any continuations, continuations-in-part, divisions, reissues, re-examinations or extensions thereof, and any and all patents of the United States of America and all foreign countries that may be issued from such applications (the "Existing IP Rights"), including the right to file foreign applications directly in the name of Company and to claim priority rights deriving from the United States applications to which foreign applications are entitled by virtue of international convention, treaty or otherwise. The foregoing grant from Assignor to Company is subject to a temporary and non-exclusive license granted by Dr. David Krag to Creare, Inc. for practicing the technology of: (a) US Patent Application No. 09/078,982 and PCT Application No. PCT/US99/10683 as necessary to satisfy the requirements of an SBIR project entitled "Systems for Localizing Tumor Margins During Surgery" ("Margin SBIR Project") and only for the duration of the Margin SBIR Project in accordance with an agreement between Dr. David Krag and Creare, Inc. dated March 9, 1999; and (b) US Patent Application Nos. 09/442,793 and 09/096,807, and PCT Application No. PCT/US99/10580, as necessary to satisfy the requirements of an SBIR project entitled "Cryosurgical Tools for Treatment of Breast Lesions" ("Cryotherapy SBIR Project") and only for the duration of the Cryotherapy SBIR Project in accordance with an agreement between Dr. David Krag and Creare, Inc. date July 26, 1999.

Assignor also agrees to not execute any writing or do any act whatsoever conflicting with this assignment, and at any time upon request, without further or additional consideration but at the expense of Company, execute all instruments and documents and do such additional acts as Company may deem necessary or desirable to perfect Company's enjoyment of this grant, and render all necessary assistance required for the making and prosecution of applications for United States and foreign patents on the inventions, for litigation regarding the patents, or for the purpose of protecting title to the inventions or patents related to the Existing IP Rights provided that the Company promptly reimburses Assignor for all expenses incurred by Assignor including his own attorney fees.

Assignor represents and warrants that (1) the Existing IP Rights, exclusive of any inventive contributions by others in continuation-in-part applications filed after execution of this Assignment, are Assignor's sole, exclusive and original creation; (2) other than the temporary and non-exclusive license granted to Creare, Inc. identified above, Assignor has

not pledged, mortgaged, assigned, or otherwise granted any rights in the Existing IP Rights or any part of them or any interest in them to any other party; (3) no adverse ownership claim exists in or to the Existing IP Rights; and (4) the party executing this Assignment of Intellectual Property Rights has full authority to act on behalf of Assignor in connection with this Assignment. Assignor acknowledges that Company has full right and authority to secure patent rights, copyrights, trademarks, and all other intellectual property rights in the subject matter of the Existing IP Rights throughout the world and to have and to hold all such rights for their respective full terms. Assignor further acknowledges that it retains no right to use the subject matter of the Existing IP Rights in any way without Company's express written consent.

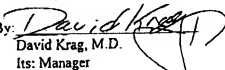
Nothing in this Agreement shall be construed as a representation made or warranty given by Assignor that the practice by the Company of the subject matter assigned hereunder, including inventions described therein, shall not infringe the intellectual property rights of any third party, except that Assignor represents and warrants that Dr. David Krag does not have any personal knowledge that the subject matter assigned hereunder, including inventions described therein, infringes the intellectual property rights of any third party.

The Company acknowledges that nothing in this Agreement is or shall be construed as a warranty or representation by Assignor as to (i) the patentability of subject matter in the Existing IP Rights and (ii) the validity, enforceability or scope of the patents maturing from patent applications in the Existing IP Rights. EXCEPT AS EXPRESSLY SET FORTH ABOVE, ASSIGNOR MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR ANY OTHER EXPRESS OR IMPLIED WARRANTIES.

The assignment of the Existing IP Rights is unconditional, except in the situation in which the Company is unable to complete the closing (or series of closings) of the first equity financing in which the Company sells shares of its equity securities for an aggregate consideration of at least \$1,000,000 on or before December 31, 2000. In this eventuality, the Existing IP Rights will be promptly assigned to you by the Company and your stock will be forfeited to the Company.

DATED as of June 8, 2000.

D. Krag LLC

By: 
David Krag, M.D.
Its: Manager

STATE OF VERMONT

)
) ss.
)

COUNTY OF Chittenden

I certify that I know or have satisfactory evidence that David Krag is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

G.D. Krag LLC

Dated this 9th day of June, 2000.

P. H. Krag

(Signature of Notary)

Paul H. Krag Jr

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Vermont, residing at Bennington, Vermont.
My Appointment Expires: _____

EXHIBIT B

AGREEMENT TO ASSIGN FUTURE INTELLECTUAL PROPERTY RIGHTS

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, and under the Restricted Stock Purchase Agreement dated June 8, 2000 ("Agreement"), between Calamari Medical, Inc. ("Company") and D. Krag LLC ("Krag"), Krag agrees to assign and deliver to Company and its heirs, successors, and assigns all rights, title and interests to intellectual property, including any and all patent rights, copyrights, trade secrets and trademark rights, for improvements to the inventions set forth in U.S. Patent Application Nos. (a) PCT/US99/10580 and (b) PCT/US99/10683, and any other intellectual property related to devices and methods for breast biopsy and surgery that Krag develops either solely or jointly while owning shares of Calamari Medical, Inc. or during the term of the Consulting Agreement between the Company and Krag, whichever is longer, excluding any inventions pertaining to sentinel node biopsy (collectively the "Future Related Technology"). Krag specifically agrees to assign any patent applications covering devices or methods related to the Future Related Technology including continuations, continuations-in-part, divisions, reissues, re-examinations, or extensions thereof, and any and all patents of the United States of America and all foreign countries that may be issued for the inventions of the Future Related Technology, including the right to file foreign applications directly in the name of Company and to claim priority rights deriving from the United States applications to which foreign applications are entitled by virtue of international convention, treaty or otherwise.

Krag also agrees to not execute any writing or do any act whatsoever conflicting with this agreement, and at any time upon request, without further or additional consideration but at the expense of Company, execute all instruments and documents and do such additional acts as Company may deem necessary or desirable to perfect Company's enjoyment of any grant under this agreement, and render all necessary assistance required for the making and prosecution of applications for United States and foreign patents on any inventions, for any litigation regarding such patents, or for the purpose of protecting title to the inventions or patents related to the Future Related Technology provided that the Company promptly reimburses Assignor for all expenses incurred by Assignor including its own attorney fees.

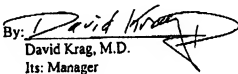
Any assignment of the Future Related Technology is unconditional, except in the situation in which the Company is unable to complete the closing (or series of closings) of the first equity financing in which the Company sells shares of its equity securities for an aggregate consideration of at least \$1,000,000 on or before December 31, 2000. In this eventuality, Company will give Krag the first opportunity to license, on a non-exclusive, worldwide, royalty bearing basis, at commercially reasonable royalty rates, including the right to sublicense, all intellectual property regarding the Future Related Technology owned by the Company at such date, including without limitation all patents maturing from

inventions included in such intellectual property. If Company and Krag cannot agree within sixty (60) days to licensing terms satisfactory to both parties, Company will have the right to negotiate with third parties.

Nothing in this Agreement shall be construed as a representation made or warranty given by Krag that the practice by the Company of the subject matter assigned hereunder, including inventions described therein, shall not infringe the intellectual property rights of any third party. The Company acknowledges that nothing in this Agreement is or shall be construed as a warranty or representation by Krag as to (i) the patentability of subject matter in the Future Related Technology and (ii) the validity, enforceability or scope of the patents maturing from patent applications in the Future Related Technology. EXCEPT AS EXPRESSLY SET FORTH ABOVE, KRAG MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR ANY OTHER EXPRESS OR IMPLIED WARRANTIES.

DATED as of June 8, 2000.

D. Krag LLC

By: 
David Krag, M.D.
Its: Manager

STATE OF VERMONT

COUNTY OF Chittenden

)
) ss.
)

I certify that I know or have satisfactory evidence that David Krag is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

and D. Krag LLC

Dated this 8th day of June, 2000.

De Jode

(Signature of Notary)

Barth H. Doss Jr.

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Vermont, residing at Burlington, Vermont
My Appointment Expires: _____

ASSIGNMENT

WHEREAS, I, David N. Krag ("ASSIGNOR"), having a post office address of 252 Thomas Road, Shelburne, Vermont, am the sole inventor of an invention entitled "SYSTEM AND METHOD FOR BRACKETING AND REMOVING TISSUE," as described and claimed in the specification for which an application for United States patent was filed on May 14, 1998 ,and assigned Application No. 09/078,982; and

WHEREAS, D. Krag LLC ("ASSIGNEE"), is desirous of acquiring the entire right, title, and interest in and to the invention and in and to any patents that may be granted therefor in the United States and in any and all foreign countries;

NOW, THEREFORE, effective as of June 8, 2000, and in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ASSIGNOR hereby sells, assigns, and transfers unto ASSIGNEE, its legal representatives, successors, and assigns, the entire right, title and interest in and to the invention as set forth in the above-mentioned application, including any continuations, continuations-in-part, divisions, reissues, re-examinations, or extensions thereof, any other inventions described in the application, and any and all patents of the United States of America and all foreign countries that may be issued for the invention, including the right to file foreign applications directly in the name of ASSIGNEE and to claim priority rights deriving from the United States application to which foreign applications are entitled by virtue of international convention, treaty or otherwise, the invention, application and all patents on the invention to be held and enjoyed by ASSIGNEE and its successors and assigns for their use and benefit and of their successors and assigns as fully and entirely as the same would have been held and enjoyed by ASSIGNOR had this assignment, transfer, and sale not been made.

UPON THE ABOVE-STATED CONSIDERATIONS, ASSIGNOR agrees to not execute any writing or do any act whatsoever conflicting with this assignment, and at any time upon request, without further or additional consideration but at the expense of

ASSIGNEE, execute all instruments and documents and do such additional acts as ASSIGNEE may deem necessary or desirable to perfect ASSIGNEE's enjoyment of this grant, and render all necessary assistance required for the making and prosecution of applications for United States and foreign patents on the invention, for litigation regarding the patents, or for the purpose of protecting title to the invention or patents therefor.

ASSIGNOR authorizes and requests the Commissioner of Patents and Trademarks to issue any Patent of the United States that may be issued for the invention to ASSIGNEE.

4/19/01
Date 4/19/01
State of Vermont
County of Chittenden
David N. Krag
David N. Krag
ss. 548-70-2311

I certify that I know or have satisfactory evidence that David N. Krag is the person who appeared before me, and the person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated April 19, 2001
Signature of Virginia D. Gometz
Notary Public Virginia D. Gometz
Printed Name Virginia D. Gometz
My appointment expires Feb, 2003